IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WP(C).No. 25303 of 2007(K)

OS.29/2006 of MUNSIF COURT, KANJIRAPPALLY

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PETITIONER: PETITIONER/PLAINTIFF

JOSE MATHEW,
EZHAKKUNNEL, PANCHEPPALLY P.O.,
PATTIMATTAM BHAGOM, KOOVAPPALLY VILLAGE.

BY ADV. SRI.LIJI.J.VADAKEDOM

RESPONDENTS: RESPONDENTS/DEFENDANTS

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1. MUHAMMED RAWTHER,
EDAKALAMATTAM HOUSE,
THALAPPALAM KARA, ERATTUPETTA VILLAGE.

2. GOPINATHAN,
MUDAVANAL, PATTIMATTAM BHAGOM,
PALAMBRA P.O., KOOVAPALLY VILLAGE.

3. PONNAMMA GOPINATHAN,
MUDAVANAL, PATTIMATTAM BHAGOM,
PALAMBRA P.O., KOOVAPPALLY VILLAGE.

BY ADV. SRI.V.K.PEERMOHAMED KHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of the plaint in O.S.29/06 before the Munsiff's Court, Kanjirappally.

Ext.P2 true copy of the written statement filed by the 1st defendant.

Ext.P3 true copy of the written statement filed by D2 and D3 in O.S.29/06.

Ext.P4 copy of the 1st report submitted by Advocate Commissioner in O.S.29/06

Ext.P5 copy of the Survey Plan and Commissioner's report submitted by the Commissioner Advocate in O.S. 29/06.

Ext.P6 true copy of the I.A. 639/07 in OS 29/06 to restore the suit properties into its original position.

Ext.P7 true copy of the objection filed by R2 and R3 to IA 639/07 in OS 29/06 before the Munsiff's Court, Kanjply.

Ext.P8 true copy of the 3rd report together with rough sketch submitted by the A.C. in O.S. 29/06 before this M.C.Kanjply.

Ext.P9 true copy of the order dtd. 20.6.07 in IA 639/07 in OS 29/06 before the Munsiff's Court, Kanjirappally.

M.N.Krishnan, J.

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W.P(C).No.25303 of 2007

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Dated this the 28th day of September, 2007.

JUDGMENT

Heard both sides.

2. This Writ Petition is filed seeking a direction to set aside Ext.P9 and for other reliefs. Brief facts would reveal that it is the case of the plaintiff that there was an order of injunction passed by the court restraining the defendants from doing particular act. It is submitted that in gross violation of the order of the court, the defendants committed act of trespass and thereby are liable to be proceeded against under Order 39 Rule 2A of C.P.C. and for such an action, a petition is already pending before the trial court.

2. Meanwhile, the plaintiff also moved an application for an interim mandatory injunction directing the defendants to restore the property into its original position, which was in existence at the time of subsistence of the order of injunction. I am informed that violation of injunction petition is still pending before court

and evidence is not taken. The interim mandatory injunction application had been dismissed by the court on the ground that better evidence is necessary and it can be done only after the trial of the case.

3. In this case relief of interim mandatory injunction is sought on the ground that the possession of the plaintiff has been interfered with by the defendants on account of their act, which is gross violation of the order of injunction. In such cases, it is always the duty of the court not to permit any party to take law into their own hands and do whatever they like. In such a situation, the court always is permitted to direct the party, who had committed the act of violation of injunction, to restore the property into its original position, which was in existence at the time of the alleged violation of the order of the court. The other types of interim mandatory injunctions are in a case where unless such order is given there will be extremely difficult for the survival of the party and therefore, the court is given the power in exceptional cases to grant the relief of interim mandatory injunction.

4. So far as this case is concerned, if there is violation of

the order of the court, it is rather obligatory on the part of the court to see that the possession as on the date before the alleged act of violation is restored. So, in such a situation, the court has to necessarily enter into a finding whether there has been violation of the order of the court. If the court is finding that there is violation of the order of the court, then the court shall direct the persons, who had committed the act of violation, to put the property into its original position. But in this case, the petition for violation of the interim injunction is still pending.

5. I am informed that the matter is also posted for trial in the list. I do not want to stay the trial of the suit. But I make it very clear that the court below shall proceed independently with violation of injunction application separately. In case the court finds that there is violation of the order of the court, then it is upto the court to direct the party, who had committed act of violation, to restore the property into its original position. So, I dispose of the Writ Petition as follows:

(i) The court below is not prevented from proceeding with the trial of the case.

(ii) The court below is directed to consider the violation of

interim application separately and not by taking evidence along with the suit and dispose of the matter and if it is found that there is violation of the order of the court, the court is at liberty to pass orders directing the person, who has committed violation, to restore the property into its original position and the other consequences, which one has to face when there is breach of the order of the court.

(iii) The court can proceed independently or simultaneously but shall not unnecessarily protract the decision in the violation of injunction petition and it shall try to do it before it finally dispose of the case.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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